

STATE OF WISCONSIN Division of Hearings and Appeals

In the Matter of



DECISIONCase #: CCO - 175825

PRELIMINARY RECITALS

Pursuant to a petition filed July 28, 2016, under Wis. Admin. Code, §HA 3.03, to review a decision by Milwaukee Early Care Administration to recover child care assistance, a hearing was held on August 18, 2016, by telephone.

The issue for determination is whether petitioner received child care erroneously due to being a child care provider herself.

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Children and Families 201 East Washington Avenue, Room G200 Madison, WI 53703

By:

Milwaukee Early Care Administration 1220 W. Vliet St., 200 East Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES #) is a resident of Milwaukee County.
- 2. Petitioner applied for child care assistance under the Wisconsin Shares program on August 15, 2015. She reported that she needed the care during evenings when she was attending school at She reported that she was employed daily as the

The children would be attending Rocka-Bye-

Baby Child Care during the evening hours.

- 3. The agency granted Shares assistance by a notice dated August 20, 2016, and an authorization for Rocka-Bye-Baby was issued on August 24.
- 4. An agency employee noted in November, 2015 that the eligibility and authorization was erroneous because petitioner is a child care provider herself. Eligibility was ended.
- 5. By a notice dated July 25, 2016, the agency informed petitioner that she was overpaid \$2,742.51 in Shares child care assistance from August 30 through November 30, 2015 due to agency error, claim no.
- 6. The <u>Wisconsin Shares Child Care Subsidy Manual</u> that was effective in August, 2015 provided that a child care provider could receive Shares subsidies if the children attended a different child care provider. See 12/10/13 Manual, §3.6.1.4.

DISCUSSION

Wis. Stat., §49.195(3), provides as follows:

A county, tribal governing body, Wisconsin works agency or the department shall determine whether an overpayment has been made under s. 49.19, 49.148, 49.155 or 49.157 and, if so, the amount of the overpayment.... Notwithstanding s. 49.96, the department shall promptly recover all overpayments made under s. 49.19, 49.148, 49.155 or 49.157 that have not already been received under s. 49.161 or 49.19(17) and shall promulgate rules establishing policies and procedures to administer this subsection.

Child care subsidies are authorized in Wis. Stat., §49.155, and thus they are within the parameters of §49.195(3). Recovery of child care overpayments also is mandated in the Wis. Admin. Code, §DCF 101.23. An overpayment is any payment received in an amount greater than the amount that the assistance group was eligible to receive, regardless of the reason for the overpayment. Wis. Admin. Code, §DCF 101.23(1)(g). Recovery must occur even if the error was made by the agency.

Wis. Stat., §49.155(3m)(a) authorizes the Department to issue Shares child care subsidies to eligible households. §49.166(3m)(d)2 provides: "If a child's parent is a child care provider, no funds distributed under par. (a) may be used for child care services that are provided for the child by another child care provider who is not the child's parent." This law became effective on November 15, 2012, and agencies were informed about it by Operations Memo no. 12-60, dated November 15, 2012. The rule now is set out in the Wisconsin Shares Child Care Subsidy Manual, §4.2.3 (effective September 28, 2015).

The statute provides for a waiver of the rule in certain cases determined by the Department. Wis. Stat., 49.155(3m)(d)3. The Wisconsin Administrative Code, §DCF 201.04(2j)(c)6 allows a child care provider/parent to obtain a waiver of the prohibition if the provider/parent will use the services of another provider where the services are needed for an activity unrelated to child care.

The initial issue is whether the agency should have authorized child care to allow petitioner to attend school. Under the <u>Child Care Manual</u> as it read at the time, the answer was yes. As noted in Finding of Fact no. 6, such authorizations were allowed because the <u>Manual</u> had not yet been updated to reflect the new law. Under that <u>Manual</u> provision petitioner could receive child care herself if she also was a child care provider.

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Thus petitioner's child care application was handled correctly by the agency worker. The problem was not an error by the worker, but that the Department had not yet updated its <u>Manual</u> to reflect the new law. The <u>Manual</u> was updated with a new release effective September 28, 2015.

I conclude that the overpayment should be rescinded. Petitioner received child care assistance from August through November as it was allowed by the Department's <u>Child Care Manual</u> when the application was made and processed. When the agency personnel noted the change in the <u>Manual</u> provision, the agency discontinued petitioner's eligibility. It does not appear that the agency personnel informed petitioner that she could seek a waiver, and had she done so, she likely would have met the criteria under Wis. Admin. Code, §DCF 201.04(2j)(c)6.

I note two additional items. First, the agency reasoning in the overpayment notice is a bit of a red herring. The overpayment notice says that for child care to occur for technical school courses, the person must participate in an approved activity for 20 hours per month. Petitioner's problem was not a lack of work in an approved activity; it was that the approved activity was one that disqualified her for child care eligibility. Petitioner clearly was working in her child care center more than 20 hours per week, and the schooling was for her to maintain her ability to work as a child care provider. Thus, if not for the prohibition for child care providers receiving Shares assistance petitioner could have been eligible for the Shares assistance while she was attending classes.

Second, while I say that petitioner likely would have met the criteria under Wis. Admin. Code, §DCF 201.04(2j)(c)6, the new Manual provision, §4.2.3, leaves out the subsection (2j)(c)6 criterion as a basis for granting the waiver. It clearly sets out subsections 1 through 5 of subsection (2j)(c), but it excludes number 6, which is the only criterion for which petitioner could seek a waiver. If I were reviewing a denial of petitioner's waiver request, I would find that the Manual provision conflicts with the administrative code provision.

CONCLUSIONS OF LAW

The overpayment claim against petitioner must be rescinded because the services she received were allowed under the <u>Wisconsin Shares Child Care Subsidy Manual</u> that was effective the dates that she applied for assistance and the application was processed.

THEREFORE, it is

ORDERED

That the matter be remanded to the agency with instructions to rescind child care overpayment claim no. against petitioner and to cease recovery of it. The agency shall do so within 10 days of this decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision.** Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison, Wisconsin, this 23rd day of August, 2016

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Brian C. Schneider Administrative Law Judge Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 23, 2016.

Milwaukee Early Care Administration - MECA Public Assistance Collection Unit Child Care Fraud